WILLIAM TAN SAM KIT *a*

v.

NGUI BAN LEE & ANOR

HIGH COURT SABAH & SARAWAK, KUCHING *b*
IAN HC CHIN J
[ORIGINATING SUMMONS NO: 24-207-99-III/I]
26 JANUARY 2000

SUCCESSION: *Will - Interpretation - 'Ready money' - Intention of testator - Whether means cash - Whether includes credit balances in bank accounts - Construction of will as a whole* *c*

In his will the testator made a provision giving the executor all other 'ready money' which might be in or about his place of residence or at any other place or places and also all money in his current account. Because of the uncertainty in interpreting this provision, the executor referred the matter to court. It was the contention of counsel for the executor that the phrase 'ready money' should be assigned a meaning that included cash at the banks whether constituted by the balance in a current account or a deposit account where no notice of withdrawal would be required. *d* *e*

Held:

[1a] In interpreting a will the court is not bound, in the absence of special circumstances, to adopt a fixed meaning of the word 'money' as being its 'legal' meaning as opposed to its 'popular' meaning. *f*

[1b] The court must ascertain as between various usual meanings which is the correct interpretation of the word within the context of the document and other relevant circumstances.

[2] It was the intention of the testator that there must be sufficient cash to meet all the pecuniary bequests. Therefore, to construe the will with the result that all the cash in the banks and other institutions would go to only one particular beneficiary would negate such an intention. *g*

[3] By using the terms 'ready money' and 'money standing to my credit on current account', the testator evinced an intention to distinguish between cash, *ie*, money in hand or at his residence or other places, and that which was at the bank. The testator also intended to exclude money at the bank except those in the current account. *h*

[Order accordingly.] *i*

Case(s) referred to:
Hsu Yik Chai v. Hsu Yaw Tang & Anor [1982] 2 MLJ 227 ***(refd)***
In re Stonham [1963] 1 WLR 242 ***(refd)***
Perrin v. Morgan [1943] AC 399 ***(foll)***
Robertson v. Broadbent [1883] 8 App Cas 812 ***(refd)***

Legislation referred to:
Administration of Estates Ordinance (Sarawak), s. 29

Other source(s) referred to:
Halsbury's Laws, 4th edn, paras 464, 475, 532
Halsbury's Law of England, 3rd edn, vol 39, p 991
Theobald on Wills, 13th edn, p 239
Williams' Law Relating To Wills, 6th edn, vol 1

For the plaintiff - Perpetua Phang (Rhoda Yap with him); M/s Reddi & Co
For the 2nd defendants - Chan Kay Poh (Chan Cheng San with him); M/s Chan & Chan

Reported by Izzaty Izzuddin

JUDGMENT

Ian HC Chin J:

Introduction

On 22 June 1999 William Tan Sam Kit ("Sam Kit"), the executor of the estate of the late Tan Sri William Tan Ho Choon, acting under s. 29 of the Sarawak Administration of Estates Ordinance, referred certain questions to this court for decisions. A beneficiary Philip Tan @ Felix Tan Soon Huat ("Philip") appeared and urged an interpretation of the will which is one of the questions referred to the court. Before referring to the rival arguments, I will reproduce the relevant parts of the will to which the questions relate, *viz*:

> I, TAN SRI DATUK WILLIAM TAN HO CHOON (BIC.K.100800) (Teochew), PSM, PNBS, JMN, PPT, CBE of "Fairview" Reservoir Road, 93000 Kuching, Sarawak, **HEREBY REVOKE** all former Wills and testamentary dispositions made by me and declare this to be my last Will.
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> 1. I **HEREBY APPOINT** WILLIAM TAN SAM KIT hereinafter referred to as ("my Trustee") to be the executor and Trustee of this my Will **AND I DECLARE** that my said Executor and Trustee shall be entitled to charge and to be paid all fees and charges for any business act or thing done in such capacities in connection with this my Will **AND I FURTHER DECLARE** that my Trustee shall have in addition to any other powers conferred on him by law; the following duties and powers:-

(a) To agree and settle accounts with all persons liable to account to my estate and for that purpose to execute valid effectual receipts, releases and discharges; and

(b) To determine in all cases of doubt whether any moneys coming are capital or income and to apportion blended funds and every such determination or apportionment shall be final and binding on all persons beneficially interested under this my Will.

2. I **GIVE** to CATHOLIC WELFARE SERVICE COUNCIL, SARAWAK (hereinafter referred to as "the Council") the cash sum of Ringgit Malaysia FIVE HUNDRED THOUSAND ONLY (RM500,000.00) free of duty to be expended with the income thereof for such charitable purposes which shall benefit wholly poor persons of the Dayak race and who are living in the rural area(s) in Sarawak, Malaysia as the Council shall select. In administering the gift, the Council and/or the Committee of the Council (as stated in the Rules and Constitutions of the Council) may deposit the capital and income with a licensed institution as defined in the Banking and Financial Institutions Act, 1989 (Act 372)

3. I **GIVE** to GABRIEL TAN the cash sum of Ringgit Malaysia TWO HUNDRED THOUSAND ONLY (RM200,000.00) free of duty.

4. I **GIVE** to WILLIAM TAN SAM KIT absolutely all other ready money which at my death may be in or about my place of residence or at any other place or places and also all money standing to my credit on current account at my bankers.

5. I **GIVE AND BEQUEATH** all the shares that I may possess or registered in my name at my death in WILLIAM TAN ENTERPRISES SENDIRIAN BERHAD, BORNEO BISCUITS FACTORY SDN. BHD. and THE SARAWAK PRESS SDN. BHD. and in any company or corporation, public as well as private (hereinafter referred to as "my said shares") to my Trustee upon trust to stand possessed of the said shares and to deal with these shares in the manner stipulated hereunder, namely:-

(i) Out of the income including dividends and bonus and other privileges and benefits arising from my said shares to pay a monthly allowance to the following names persons in the shares set out hereinbelow, that is to say:-

(a) my former Manager RONALD NGUI BAN LEE 2/10th share

(b) my nephew PHILIP TAN SOON HUAT (BIC.K.230361) 2/10th share

(c) WILLIAM TAN SAM KIT 6/10th share

(ii) In the event that any of the shares shall be sold or disposed off, my Trustee shall distribute the proceeds of sale, after settlement of all expenses and costs incidental to the sale thereof; to the persons entitled to the income, bonus, dividend and other privileges and benefits from the said shares, in the proportion set out in the preceding sub-clause.

6. I **GIVE DEVISE AND BEQUEATH** all the residue and remainder of my estate, real and personal of whatsoever kind and wheresoever situate of which I shall be possessed of or over which I shall have any disposing power at my death unto my Executor and Trustee **UPON TRUST** to settle call in and convert into money such parts thereof as shall not already consist of money and to stand possessed of the proceeds of such sale calling in and conversion into money together with such part of my said estate as shall already consist of money (hereinafter collectively called "the Residuary Trust Fund") upon the further trusts to divide the said Residuary Trust Fund and to pay the same in the following manner, that is to say:-

(a) To my former Manager RONALD NGUI BAN LEE of Odeon Theatre, Kuching, Two (2) shares of the Residuary Trust Fund;

(b) To my nephew PHILIP TAN SOON HUAT, two (2) shares of the Residuary Trust Fund;

(c) To WILLIAM TAN SAM KIT, Six (6) shares of the Residuary Trust Fund.

7. I **DECLARE** that if any of the said RONALD NGUI BAN LEE, my nephew PHILIP TAN SOON HUAT and WILLIAM TAN SAM KIT shall die in my lifetime leaving children at my death who being male shall attain the age of twenty-one years or being female shall attain that age or previously marry such children shall take equally between them the share which their parent would have taken had he survived me and live to attain a vested interest.

8. I **DIRECT** that my Trustee shall erect construct or build a tombstone over my grave to the value of Ringgit Malaysia FIFTY THOUSAND ONLY (RM50,000.00) and shall be paid out of my Residuary Trust Fund.

9. I **DIRECT** that the estate duty all succession duties and other duties (if any) debts and funeral and testamentary expenses payable on my death in respect of all the estate both real and personal hereinbefore disposed of shall be paid out of my Residuary Estate Fund in exoneration of the other respective property comprised in the several successions hereinabove mentioned and in future exoneration of the respective legatees and devisees thereof.

IN WITNESS WHEREOF I have hereunto set my hand this 9th day of July, 1998 at Kuching, Sarawak, Malaysia.

The principal question referred to the court concerns cl. 4 of the will, *supra*, and the question that was framed can be summarised in these words: Whether the description of "ready money" in cl. 4 includes the money described in items 1, 2, 3, 4 and 5 of the following table of the assets of the testator, *viz*.:

ASSETS OF THE TESTATOR

No.	Type	Description	Amount
1.	Savings Accounts	Standard Chartered Bank Malaysia Berhad Mastersavings Account	RM128,374.23
2.	Current Accounts	Standard Chartered Bank Malaysia Berhad.	RM 190.00
		Hong Kong Bank Malaysia Berhad. Partner Account	RM 21,939.68
		PhileoAllied Bank (Malaysia) Berhad Account	RM 30,174.29
		United Overseas Bank Limited (Singapore) Current Account	S$27,038083
3.	Fixed Deposits Accounts	Chew Geok Lin Finance Berhad, Kuching;	
		Credit Corporation Malaysia Berhad, Kuching;	
		Hong Kong Bank Malaysia Berhad;	
		Overseas Union Bank (Malaysia) Berhad, Kuching;	RM9,245,816.40
		PhileoAllied Bank Kuching;	
		Standard Chartered Bank Malaysia Berhad, Kuching;	
		United Overseas Bank (Malaysia) Bhd Kuching;	
		Overseas Union Bank Limited (Singapore) ACU Fixed Deposit Account	NZD 299,484-81
		United Overseas Bank Limited (Singapore) Account	S$ 600,000.00

4.	Credit Card Account	Standard Chartered Bank Malaysia Berhad Visa Gold Account	RM 103.00
5.	Travellers Cheques	Standard Chartered Visa Travellers Cheques	US$4,300.00
6.	Shares	Sarawak Steamship Company Berhad	3,840 shares
		The Sarawak Press Sdn. Bhd	13,348 shares
		Khong Guan Holdings Malaysia Berhad	5,760 shares
		Overseas Union Enterprise Limited (Singapore)	65,000 shares
		Khong Guan Flour Milling Ltd. (Singapore)	70.200 shares
		Borneo Biscuit Factory Sdn Bhd	150 shares
		Livingstone Resources NL (Western Australia)	130,000 ordinary shares 65,000 options
		Khong Guan Enterprise Sdn Bhd	5,000 shares
7.	Motor Car	A Jaguar Sovereign 4.2(a) bearing registration number KH 500Q.	Value not known

Since the answer to that question depends upon an interpretation of those words, I will first bear in mind the relevant principles governing the construction of a will.

Principles Governing Construction Of A Will

The object of interpreting a will is to give effect to the intention of the testator that is expressed in the words of the will and such words are to be read in the light of the circumstances in which the will was made (*Hsu Yik Chai v. Hsu Yaw Tang & Anor.* [1982] 2 MLJ 227 FC, 230, approving a passage of Lord Romer in *Perrin v. Morgan* [1943] AC 399, 420). For the purpose of ascertaining the intention, the will is read, in the first place, without reference or regard to the consequences of any rule of law or of construction and the words of the will are given the meaning which is rendered necessary in the circumstances of the case by the context of the

whole will, the particular passage concerned being taken together with whatever is relevant in the rest of the will to explain it (*Halsbury's Laws*, 4th edn, para. 464).

What, then, were the circumstances in which the will was made? The testator made his will on 9 July 1998 and then passed away on 6 December 1998. He was a talented architect and a successful businessman. He was well versed in the English language. He had held such public offices as the President of the Kuching Municipal Council, member of the Sarawak State Cabinet (Supreme Council as it was then known), Senator of the Dewan Negara and the Speaker of the Sarawak State Legislative Assembly. The beneficiary Philip is the nephew of the testator while Sam Kit, also a benficiary apart from being the executor, is the adopted son of the testator. Another beneficiary is Ngui Ban Lee who is the natural father of Sam Kit. There was warm and cordial relationship between the testator and Philip and Philip had in October 1996 accompanied the testator on a trip to China.

The Interpretation

I turn now to the words of the will. Clauses 2 and 3 are clear and simple words making specific pecuniary bequests. Mr. Chan Kay Poh, learned counsel for Philip, argued that these provisions are significant and relevant for considering cl. 4 of the will because, learned counsel argued, it shows an intention to provide a large enough residuary estate to meet the specific pecuniary bequests of cls. 2 and 3 and that when construing cl. 4, the court must lean towards a construction that would result in a substantial residuary estate to meet those bequests. This contention leads me to consider the language of cl. 4 to see what the intention of the testator was. Clause 4 says:

> 4. I **GIVE** to WILLIAM TAN SAM KIT absolutely all other ready money which at my death may be in or about my place of residence or at any other place or places and also all money standing to my credit on current account at my bankers.

Ms. Perpetua Phang, learned counsel for the executor Sam Kit, had argued that the words "ready money" should be assigned the meaning that includes cash at the banks whether constituted by the balance in a current account or a deposit account where no notice of withdrawal is required, citing *Halsbury's Laws*, 4th edn, para 532; *Theobald on Wills*, 13th edn, p. 239; *Williams' Law Relating To Wills*, 6th edn, vol. 1. In my view, I am not bound by that definition of ready money because in interpreting a will the court is not bound in the absence of special circumstances to adopt a fixed meaning of the word "money" as being its "legal" as opposed to its

"popular" meaning, but must ascertain as between various usual meanings which is the correct interpretation of the particular document in the light of the context and other relevant circumstances (*Perrin v. Morgan; In Re Stonham* [1963] 1 WLR 242). In this regard I will reproduce what I consider is pertinent what *Halsbury's Laws* (?) p. 341 said:

> Previous cases on the construction of other wills are considered by the court, particularly where the question relates to real property, but no weight is given to them except in so far as they lay down some rule of construction, applicable to the case before the court, or are based on reasoning which commends itself to the court. The proper way to construe a will is to form an opinion apart from the cases and then to see whether the cases require a modification of that opinion, not to begin by considering how far the will resembles other wills on which decisions have been given.
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> Although the court may follow a previous decision on another will where the language was identical with, or very similar to, that in the will under consideration, and where no real distinction exists between the cases, mere similarity of language does not bind the court to adopt a similar construction. The surrounding circumstances may be different in every case and may give a different meaning to the words, and it is the principles of construction exemplified, rather than the particular decisions themselves, which are followed. One judge is not bound to follow another on questions of mere verbal interpretation, and, even when the established rules of construction are properly applied, two minds may fairly differ.

Clauses 2 and 3 had used the term "cash" in its popular meaning. When the term "other ready money" is used in cl. 4, it was intended to mean other "cash". This interpretation is further strengthened by the qualification that the "other ready money" are those that may be found "in or about my place of residence or at any other place or places". When the testator talks about "ready money" found in his place of residence, he has intended the "ready money" to mean the popular term "cash" and not the meaning that includes the credit balances found in his bank accounts, be it savings, current or deposit account. That he so intended is crystal clear when one considers the remaining phrase of cl. 4 which bequeathed to Sam Kit: "... and also all money standing to my credit on current account at my bankers." By using the terms "ready money" and "money standing to my credit on current account" in cl. 4, the testator evinced the intention to distinguish between cash, that is money in hand or at his residence or other places, and that which is at the bank. The testator intended Sam Kit to have the cash, understood popularly, and the money in the current account and not other money which is to be distributed under other clauses of the will. Ms. Phang argued that the term "residence" was followed by a description of "at any other place or places" which allows the interpretation

of a bank being "the other places" and, consequently, to admit of an interpretation that would include money in the bank. I am unable to accept that contention because further light had been thrown on the intention of the testator as he specifically referred to money in the current account that he bequeathed to Sam Kit which evinced the intention to exclude money at the bank except those in the current account. Earlier, I have referred to the argument of Mr. Chan that because of large cash bequests, a construction must result in there being a large residuary estate so as to meet the obligations of those bequests and this can only be done if the term "other ready money" is confined to cash at the residence. Ms. Phang disagreed because, learned counsel argued, specific pecuniary bequests are, as a matter of law, paid out of the personal estate not specifically bequeathed, citing *Robertson v. Broadbent* [1883] 8 App Cas 812 and even though such personal estate includes the money which would go entirely to Sam Kit under cl. 4 it nevertheless is subject to the obligation to meet the specific pecuniary bequests. As a matter of law, there is no ground to disagree with Ms Phang. However, though the testator can be considered a learned person I am of the view that it could not be in his knowledge that the specific pecuniary bequests would under the law be met by the personal property not specifically bequeathed. Therefore, this point of law is no answer to the submission of Mr. Chan. To my mind, it was the intention of the testator that there must be sufficient cash to meet the pecuniary bequests. Therefore, to construe the will with the result that all the cash in the banks or other institutions tabulated as item 1, 2, 3, 4 and 5, in the table, would go to Sam Kit would be to negate such an intention.

Mr. Chan had urged the court to employ the *ejudem generis* rule to construct cl. 4 to limit the general words "at any other place or places" to the same kind as the particular words "place of residence" with the result that the general words are taken to mean "at any other place of residence or at any other places of residence of the testator". That the rule can be employed in the construction of a will is supported by *Halsbury's Law of England*, 3rd edn, vol. 39, p. 991. However, Ms Phang, though not disputing that general principle argued that it is not applicable in this case (citing *Halsbury's Laws*, 4th edn. para 475) because the words of cl. 4 can be read in its ordinary and natural sense so as to make sense with respect to the surrounding circumstances. Ms Phang went on to submit:

> Further, the *ejusdem generis* rule will clearly apply should the testator had used the words "at any other place of residence or residences" then, applying the *ejusdem generis* rule, it may be clear that it is confined to ready money found at the place of residence or at any of the testator's other place of residence or places of residence. However, the words used are "at any other place or places" and the word "residence" is deliberately omitted. The intention to distinguish places of residence from any other places is quite clear.

The words used in the illustration by Ms Phang does not permit the employment of the rule since all the words are particular since they refer to "residence". I agree with Mr Chan that those used in clause are particular words followed by general words which permits the employment of the rule. Applying the rule it would mean that the words "at any other place or places" were intended to apply to residence and thus "ready money" would mean money in the said popular sense and not money in the bank or financial institution. I am also in agreement with Mr. Chan that the maxim *inclusio unius est exclusio alterius* (the inclusion of one is the exclusion of another) would apply with the result that the testator when he in cl. 4 gave to Sam Kit "all money standing to my credit on current account at my banker" he meant only to all those money in the current account and not those in fixed deposits or savings accounts.

Conclusions

My decisions on the questions referred to me are these:

(1) The meaning of "ready money" in cl. 4 does not include the moneys or the moneys standing to the credit of the testator in the accounts listed as item 1, 2, 3, 4 and 5 in the table of the assets of the testator, *supra,* or in such similar accounts that may exist;

(2) Clause 4 does bequeath to Sam Kit the money in the current account standing to the credit of the testator in the accounts listed as item 2 in the table of the assets of the testator, supra, or in such similar accounts that may exist;

(3) The assets listed in item 1, 3, 4 and 5 shall be treated as the "residue and remainder" of the estate of the testator to be distributed after payment of the pecuniary bequests of cls. 2 and 3 and after settlement of all just debts of the testator in accordance with cl. 6 of the will to the following persons and in the proportions appearing against their names:

(a) Ngui Ban Lee – 2/10th Share

(b) Philip – 2/10th Share

(c) Sam Kit – 6/10th Share

(4) The creditors of the testator shall be established by publication in one issue of the local English newspaper and one issue of the local Chinese newspaper requesting such creditors, if any, to submit their claims with their full names, address, a statement of their accounts and the nature

of the securities held by them with supporting documents to Messrs Reddi & Co., advocates so as to reach them within 30 days from the date of such publication and in default thereof or failing which such creditors shall be excluded from the benefit of this order.

It is because the will is clear in all other aspects and the other directions sought are in connection thereto, I do not propose to give them. All Sam Kit has to do is to ensure the estate is distributed according to the will to the persons entitled. Cost of these proceedings shall be paid out of the estate of the testator.

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